

MONTANA LEGISLATIVE HISTORY

Chapter 514 19 77

Bill H _____ S H19

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 3-15 _____ c

3-16 _____ c

3-17 _____ c

3-22 _____ c

Date Out 3-25 _____ c

S. Committee on Judiciary

Hearing Date(s) 2-14 _____ c

2-14 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1 *Senate* BILL NO. *419*
2 INTRODUCED BY *Sen. Robert Murray*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE DEFINITION
5 OF AN INCAPACITATED PERSON IN THE MONTANA UNIFORM PROBATE
6 CODE; AMENDING SECTION 91A-5-101, R.C.M. 1947."
7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9 Section 1. Section 91A-5-101, R.C.M. 1947, is amended
10 to read as follows:
11 "91A-5-101. Definitions and use of terms. Unless
12 otherwise apparent from the context, in this code:
13 (1) "incapacitated person" means any person who is
14 impaired by reason of mental illness, mental deficiency,
15 physical illness or disability, advanced age, chronic use of
16 drugs, chronic intoxication, or other cause (except
17 minority) to the extent that he lacks sufficient
18 understanding or capacity to make or communicate responsible
19 decisions concerning his person or which cause has so
20 impaired the person's judgment that he is incapable of
21 realizing and making a rational decision with respect to his
22 need for treatment;
23 (2) "protective proceeding" means a proceeding under
24 the provisions of section 91A-5-401 to determine that a
25 person cannot effectively manage or apoly his estate to

1 necessary ends, either because he lacks the ability or is
2 otherwise inconvenienced, or because he is a minor, and to
3 secure administration of his estate by a conservator or
4 other appropriate relief;
5 (3) "protected person" means a minor or other person
6 for whom a conservator has been appointed or other
7 protective order has been made;
8 (4) "ward" means a person for when a guardian has been
9 appointed. A "minor ward" is a minor for whom a guardian has
10 been appointed solely because of minority."

-End-

INTRODUCED BILL

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
S.B. 396	2-4-77	2-12-77	2-12-77			2-12-77			
S.B. 397	2-4-77	2-12-77	2-12-77	2-12-77					
S.B. 398	2-4-77	2-12-77	2-12-77			2-12-77			
S.B. 402	2-5-77	2/17, 2/22 & 2-23-77	2-23-77			2-23-77			
S.B. 405	2-5-77	2-16-77	2-16-77	2-16-77					
S.B. 406	2-5-77	2-16-77	2-16-77		2-16-77				
S.B. 413	2-8-77	2/14 & 2-16-77	2-16-77			2-16-77			
S.B. 414	2-8-77	2-17-77	2-17-77	2-17-77					
S.B. 415	2-8-77	2-17-77	2-17-77	2-17-77					
S.B. 417	2-8-77	2-14-77	2-16-77		2-16-77				
S.B. 418	2-9-77	2/15 & 2-18-77	2-18-77		2-18-77				
S.B. 419	2-9-77	2-14-77	2-16-77	2-16-77					
S.B. 439	2-16-77	2-18-77	2-18-77		2-18-77				

(Use Separate Sheet for Senate, House Bills, and Resolutions)

2-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 14, 1977

The meeting of this committee was called to order by the Chairman, Senator Turnage, at 9:30 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Bob Keller - Kalispell
Joan Uda - Office of Budget & Program Planning
Jim Larson - Montana Hospital Assn.
Tom Boland - Board of Visitors
Donald L. Harr - Billings and Great Falls Deaconess Hospital,
Dept. of Psychiatry
Duncan D. Burford - M.D., President of Montana Psychiatric
Assn., Billings
Jerry T. Loendorf - Montana Medical Assn.
Chad Smith - Montana Hospital Assn.
William Leary - Montana Hospital Assn.
Nick Rotering - attorney, Dept. of Institutions

CONSIDERATION OF SENATE BILL 413:

Senator Towe, sponsor of S.B. 413, explained the bill corrects some things which were omitted last session. He then went over these items for the committee. After doing this, he introduced Mr. Bob Keller of Kalispell as his first proponent of S.B. 413. Mr. Keller suggested amendments to page 20, line 17, and to page 25, line 17. Mr. Keller told the committee that it was wrong to have to wait until people get seriously mentally ill before they can be helped.

The next proponent to testify was Nick Rotering of the Department of Institutions. He said that he was concerned about lines 3 and 5 on page 35 and about section 16 on page 44 which concerns the makeup of the Board of Visitors. He was also concerned about the payment of legal counsel used by the Board of Visitors which is on page 47.

Joan Uda, attorney for the office of Budget and Program Planning, appeared in support of S.B. 413, however, she said that they question the time on the voluntary admissions and suggested that perhaps there should be a valuation period of ten days.

The next proponent was Tom Boland of the Board of Visitors who testified for himself and not the board, saying that he felt that S.B. 413 is a compromise bill and not left wing legislation as has been rumored, and that he is afraid the opponents will try to convince the committee of this.

Jim Larson, Veterans Admin., also appeared in support of S.B. 413. He was present on behalf of the Montana Hospital Association.

Dr. Harr, from Billings, representing the Billings and Great Falls Deaconess Hospitals, was the next proponent of S.B. 413. He said that they are very much in concurrence with the bill's changes to the law. He suggested that page 44, line 23, be amended by putting in physicians or medical profession rather than medical sciences. He also said he believed that page 47, line 17, should be changed so that there would be something to determine if there was an irregularity. He then complimented Senator Towe and others who worked on S.B. 413 on the remarkable job they had done. At this time Dr. Harr was allowed to speak on S.B. 417 as he had to leave early. He said that he felt that this bill is quite unnecessary if S.B. 413 is passed because the subject is well covered in S.B. 413. Therefore, he opposed S.B. 417.

Dr. Duncan D. Burford, of Billings, president of the Montana Psychiatric Assn. was the next proponent of S.B. 413 to testify. He said that he appreciated the work that had been done on S.B. 413. Dr. Burford said that mentally ill is a very restrictive definition and called for a better definition of seriously mentally ill. He told the committee that they now can offer effective and quick treatment for serious mental disorders and that the law should not stand in the way of a person getting the treatment he is in need of.

The next proponent was Tom Honzel, representing the County Attorney Assn. who said that they generally support S.B. 413, however, they are concerned in the smaller counties about the provisions for the immediate appointment of counsel and the five day period.

Jerry Loendorf, representing the Montana Medical Assn., told the committee that they supported S.B. 413 if it is true that attorneys can work with it.

Nancy Lien of the Mental Health Advisory Council then appeared as a proponent of S.B. 413 and simply said that they supported it.

Chad Smith, representing the Montana Hospital Assn., was the next proponent to testify and he offered some amendments to the bill. (See Exhibit 1) He explained that one was that the patient should not be heavily sedated and that the other two amendments would allow the hospital facility to determine if they will take a patient or not. He further explained the amendments they proposed to the committee and presented amendments for S.B. 417. (Ex. 2)

CONSIDERATION OF SENATE BILL 419:

Senator Towe explained this bill to the committee and said that, in some ways, this is worse than commitment.

Dr. Burford of Billings, psychiatrist, said they favored this bill if it is workable.

There were no opponents present to testify on S.B. 419.

CONSIDERATION OF SENATE BILL 417:

Dr. Burford, the Billings psychiatrist, said that S.B. 413 accomplishes the purpose of this bill and that he thinks this bill is not necessary. He favored putting it into S.B. 413.

Senator Dover, the bill sponsor, said the rural community is different from cities and that is why he had sponsored this legislation. He read a prepared statement to the committee. (Ex. 3)

Jim Larson, representing the Montana Hospital Assn., told the committee that he thinks section 3 is an existent provision of the law -- and also section 13, and that they should be included in any legislation that comes out of this committee.

There was no more testimony on the above bills considered at this meeting so the Chairman told the witnesses that the committee would consider the testimony given and then would consider putting these bills together and incorporating them into one bill.

There being no further business, the committee adjourned at 11:05 a.m..

SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY

COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2-14-77

[illegible]

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 16, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman at 8:10 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senator Regan who was excused until 9:30 a.m. this date.

The first order of business was the voting on bills in Executive Session.

EXECUTIVE SESSION

The following Senate bills were acted on as follows:

413 - Senator Towe moved each of the attached amendments, all of which carried unanimously. (See attachment #1). Senator Towe then moved that S.B. 413 as amended DO PASS. The motion carried unanimously.

419 - Senator Towe moved that S.B. 419 DO PASS. The motion carried unanimously.

417 - Senator Towe moved that S.B. 419 DO NOT PASS. The motion carried unanimously.

There being no further time for executive action, the committee met at this time, 9:30 a.m., to hear the bills scheduled for this date. At this time, Senator Regan joined the committee.

CONSIDERATION OF SENATE BILL 405:

Senator "Sandy" Mehrens of District 45, Anaconda, explained the object of this bill and said that he had introduced it at the request of the Fire Marshall.

DISPOSITION OF SENATE BILL 405:

Senator Warden moved that S.B. 405 DO PASS. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 406:

Senator Jergenson, District 3, Chinook, sponsor of this bill, was present and explained the bill to the committee. He said that he had introduced it at the request of the Public Service Commission. He then called upon former senator, Gordon Bollinger, Chairman of the Public Service Commission, who in turn called upon the Commission's attorney, Ron Smith, to explain the bill in detail. He told the

ROLL CALL

JUDICIARY

COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2-16-17

[illegible]

JUDICIARY

COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 405	requiring notification of state fire marshal whenever a person convicted of arson or acquitted on the ground of mental disease, etc.	2-22	Mehrens	3-4	concurred amended	3-7
SB 419	amending the definition of an incapacitated person	2-22	Towe	3-15	not concurred in	3/25
SB 414	increasing the fees in justice court in civil actions from \$3.50 to \$5.00	2-23	Roberts	3-4	concurred	3-7
SB 415	providing \$7.50 in court costs in justice courts for each preliminary hearing held.	2-23	Roberts	3-4	concurred amended	3-8
SB 437	establishing a joint underwriting association for medical liability insurance	2-23	Dunkle	3-11 Friday	concurred	3-11
SJR 20	urging the re-regulating dam on the Kootenai river be designed and built	2-23	Roberts	3-10 Thursday	concurred	3-10

JUDICIARY COMMITTEE

March 15, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Tuesday, March 15. All members were present except Representatives Colburn, Conroy and Roth.

Scheduled for hearing were Senate Bills 413 and 419.

SENATE BILL #413:

SENATOR TOWE, DISTRICT #34:

This bill is a clean-up bill. It is to revise and clarify the laws relating to the commitment of mentally ill persons and to amend those sections dealing with this area. We do have the support of all of the groups working with this problem and have been working with them. The county attorneys association is in support, also. There is pretty much general agreement. He went on to discuss section 3, subsection (2) on page 5 and the top of page 6. One of the requests that we received was that we should not limit voluntary admission. At this point any qualified person can make the certification. He discussed the system of transporting and the cost of this. He also mentioned that they were changing the procedure concerning minors. We are saying that a minor can be committed for up to one year. He can take advantage of the measure that says he can be released within 5 days.

The Senator presented a copy of the proposed amendment, on page 7, line 20, and page 8, line 10, concerning the waiver of rights. We changed that, the waiver may be made by counsel or the responsible person acting together. The right to counsel may not be waived and the right to treatment can not be waived. There are also some changes on page 9, regarding the minor. We are taking away the complicated procedure for consent. The court shall appoint a guardian, if it is necessary to look out for the minors interests.

On page 11, concerning the procedure, in some cases it might be hard to make this work. First of all, someone must complain to the county attorney. The county attorney draws up the papers and files with the clerk of court. If there is a judge, then it goes on from there. If there is no judge, the clerk of court calls in to the nearest judge and then the judge is read the petition on the phone. Counsel is then appointed. The person is advised of his rights and then the 4 hour examination is conducted. From that point on other hearings can be waived. He presented proposed amendments to the committee.

On page 16, line 22, page 17, lines 23, 24 & 25, and on page 18. As he went through the amendments he explained each of them in detail.

He then went on to continue with the indoctrination, at that point if detention is ordered there is an immediate right to a detention hearing. This hearing has to be within 5 days of the original hearing. This will take the place of the old 72 hour treatment. On page 20,

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the standard of proof, there are some changes. He discussed the imminent threat of self-inflicted injury. On page 24, he discussed the post-trial disposition hearing. He commented that on page 28, the emergency situation was pretty much unchanged.

He went on to explain the authorization to transport a patient, on page 31. On page 40, the amount of time would be changed from 5 days to 10 days, and there is now required a 2nd examination within 30 days. On page 45, section 16, there are some changes in the board. We want to add language, as to who may be a member. We ought to change that to exclude universities. The name should be the board of visitors, instead of the board of institutions. He also said, there would be one full-time legal counsel at Warm Springs.

ROBERT KELLER, ATTORNEY AND FORMER DISTRICT JUDGE:

While I was on the bench I was very concerned with this, 377. I was charged with making this bill function. We met for over 8 hours and hashed over the bill, the possibilities and what could be done. We came up with these amendments. You have an initial appearance and a hearing within 5 days. He went on to talk about the facilities. He suggested two amendments, which follow: On page 45, line 23, following "state", insert wording excluding state colleges or universities. Also, another amendment, page 48, section 8, line 12, following: "and" insert "the director of the department of institutions". This is a transitional thing so that we can utilize what we do have.

DR. BLOUKE, DEPARTMENT OF INSTITUTIONS:

We have had an opportunity to review the bill and are in favor of it.

JOAN UDA, BUDGET AND PROGRAM PLANNING:

Working for the governors office I have reviewed the bill and have been involved in the process. It does represent a compromise. It is a bill we can live with and for that reason we do support it. I do have some reservations about the definition on page 2. It redefines the mental health facility. I register some concern about this. That does limit what a mental health facility can be. It has no legal effect, but it possibly will have some practical effect. On page 6, line 2 through 5, concerning voluntary admission, a voluntary commitment, ought to be a voluntary commitment. I am not convinced there is a real need for the 10 days. She went on to talk about the language might not be clear. I do think it might improve the workability, however.

CHAD SMITH, MONTANA HOSPITAL ASSOCIATION:

We are satisfied, that as written, we can live with it. I do want to emphasize the need for the amendments, on page 3 and page 11, line 7, the definition of the mental health facility. These are two very important amendments to this bill and it will make this bill workable. He went on to talk about how to control a person if the need arises.

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JAMES JOHNSON, MONTANA LEGAL SERVICES:

I represent many of the patients at Warm Springs State Hospital. He discussed various mental disorders. I would suggest that on line 19, page 4, you add some words, and on page 26 and 27 you insert the language that was lost. You can't tell what is meant. He discussed what might happen to a patient. I have to oppose the hospital amendments. You are asking for more persons to be maimed in jail and for more suicides. He discussed the high rate of suicides among mental patients.

JAMES LARSON, MONTANA HOSPITAL ASSOCIATION:

I would like to address briefly the hospital amendments. The violent patients are the ones that cause the problems. They are usually put in a security room, they may be sedated and put in restraints. If we don't have these amendments the hospital might be subject to court action.

SUZANN WEILAND, COUNTY ATTORNEYS:

I attended the meeting that lasted forever. On behalf of the County Attorneys Association I would like to propose some amendments. She mentioned what has to be done right now if a person tries to commit suicide. There are counties where there are no district judges. This amendment would take care of it by it going before the Justice of the Peace. As this now reads it seems to me, we have to release the patient. I have a few other suggested amendments. She presented a copy to the committee (attached). She went on and enumerated the amendments and commented that 5 days should be changed to 8 days.

PAT BOEDECKER, LEWIS & CLARK MENTAL HEALTH ADVISORY BOARD:

I am speaking for the person who might become mentally ill in Montana. On page 3, section 3 and page 11, section 4 of the hospital amendments I want to discuss the effect of them. She went through the amendments and pointed out her objections. I trust the committee will study these amendments thoroughly. She presented a copy of her testimony to the committee. (attached).

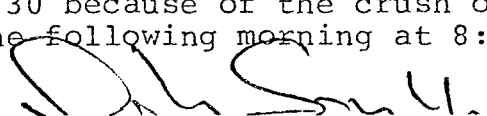
JIM LARSON:

I oppose Senate Bill #419. He went on and talked of the court appointed guardian and that a person could be signed into Warm Springs on that authority. He felt the bill denied them their rights. It denies them equal protection under the commitment law. I vigorously oppose the addition of the county attorney as a person who might be able to sign a commitment petition.

CHAIRMAN SCULLY:

Are you reading the same bill I am. I don't see all of this in that bill.

The meeting had to be adjourned at 9:30 because of the crush of other committees, and would be continued the following morning at 8:00 a.m.



JUDICIARY COMMITTEE
March 16, 1977

The meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana. All members were present except Representatives Colburn, Kennerly and Seifert.

The hearing continued on Senate Bills 413 and 419, because of the lack of time the day before.

SENATOR TOWE, DISTRICT #34:

Thank you Mr. Chairman, for letting us come back today to finish testimony on these bills. I appreciate it. I wish to go over the amendments presented yesterday by Sue Welland. I am vigorously opposed to accepting them. He went through the amendments and stated his objections.

SENATE BILL #419:

SENATOR TOWE, DISTRICT #34:

This bill changes the definition of an incapacitated person in the Montana Uniform Probate Code. You cannot commit someone unless they are dangerous. I didn't want to fiddle with the definition of "seriously mentally ill". This bill goes into the guardianship statute as it now exists. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself. Or, if the person's judgment is so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

I have an amendment I wish to present to you, amend the title, line 6, following "code" insert, "and authorizing court ordered treatment of such persons"

BOB KELLER:

We have to do something with the people who are mentally ill but are not seriously mentally ill. This is an effort to polish the guardianship act.

JOAN BUDA, GOVERNOR'S OFFICE:

With the amendments, I am satisfied that this bill will give us a mechanism to solve the problem.

Discussion followed about what constitutes dangerous, mentally ill, or dangerously mentally ill.

SENATOR TOWE:

Seriously mentally ill means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof, or which has deprived the person afflicted of the

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ability to protect his life or health. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this chapter.

The real problem is the people being released without the proper care.

There was no further discussion and no further questions, no other proponents or opponents, the hearing closed on SB 419.

The committee adjourned at 9:10 and went into executive session.


John P. Scully, Chairman


Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 17, 1977

The House Judiciary Committee held an executive session in room 436 of the Capitol Building, Helena, Montana, on Thursday, March 17, 1977 at 8:30 a.m. Chairman Scully presided. All members were present except Representatives Colburn and Seifert.

SENATE BILL #402:
REPRESENTATIVE HAND moved to table. The motion carried with the vote unanimous.

CHAIRMAN SCULLY appointed the following representatives to a sub-committee to study Senate Bills 413 and 419.
Representative Kennerly Representative Courtney
Representative Dussault Representative Ramirez
Representative Baeth

The sub-committee will report on Tuesday the 22nd.

CHAIRMAN SCULLY appointed the following representatives to a sub-committee to study Senate Bills 33, 34 and 37.
Representative Lory
Representative Eudaily

CHAIRMAN SCULLY appointed Representative Lory to carry Senate Bill 53 when it goes to the floor. He also appointed Representative Keyser to meet with staff attorney Diana Dowling and prepare amendments for the bill.

SENATE JOINT RESOLUTION #16:
REPRESENTATIVE LORY moved to be "not concurred in". With the vote a tie the bill will go to the floor with no committee recommendation.

SENATE BILL #149:
REPRESENTATIVE KEYSER moved "be concurred in". The motion carried with Representative Lory and Dussault voting "no".

SENATE BILL #101:
This bill was back for committee action after having been voted for reconsideration. REPRESENTATIVE DUSSAULT moved the amendments. The motion carried with the vote unanimous. REPRESENTATIVE LORY moved "not concurred in as amended". REPRESENTATIVE DUSSAULT moved a sub-stitute motion "be concurred in as amended". The vote was called by roll call and carried 7 to 8, with 3 absent.

Yes

No

Baeth McLane
Courtney Teague
Day
Dussault
Holmes
Keyser

Conroy Roth
Hand
Kennerly
Eudaily
Lory
Scully

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 22, 1977

The executive session of the House Judiciary Committee was called to order by Chairman Scully at 8:45 a.m. in room 436 of the Capitol Building, Helena, Montana. All members were present except the following: Representatives Colburn, Conroy, Courtney, Kennerly and Seifert.

HOUSE JOINT RESOLUTION #93:

REPRESENTATIVE LORY moved "do not pass". REPRESENTATIVE DUSSAULT moved a sub-stitute motion "do pass". The motion was tied with the bill going out of committee with no recommendation.

SENATE BILL #33:

REPRESENTATIVE LORY reported from the sub-committee that the bill be concurred in, and moved the motion. The motion carried with the vote unanimous.

SENATE BILL #37:

REPRESENTATIVE RAMIREZ reported he did not have the amendments ready for presentation to the committee. He will have them Friday.

SENATE BILL #34:

REPRESENTATIVE LORY moved that the sub-committee report of "be concurred in" be adopted. The motion carried with the vote unanimous.

SENATE BILL #53:

REPRESENTATIVE KEYSER moved to amend. The amendments as proposed were voted upon and the motion carried with vote unanimous. REPRESENTATIVE LORY moved "be concurred in as amended". The motion carried with the vote unanimous. (amendments attached)

SENATE BILL #216:

REPRESENTATIVE DAY reported the water sub-committee had voted to table this bill. The Judiciary Committee accepted the committee report to table and the motion carried with the vote unanimous.

SENATE BILLS #413 and 419:

These bills are still in sub-committee for work and study. The committee will report on Friday.

SENATE BILL #385:

REPRESENTATIVE KEYSER moved be concurred in. The motion carried with the vote unanimous.

REPRESENTATIVE HOLMES came in late to committee and moved the committee reconsider its action on Senate Bill #385. The motion failed with only one yes vote. Representative Holmes asked that she be recorded as a no vote on this bill.

SENATE BILL #27:

REPRESENTATIVE RAMIREZ moved to amend on page 36. The motion carried with the vote unanimous. REPRESENTATIVE LORY moved to amend on pages

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 25, 1977

The House Judiciary Committee met for executive session at 9:00 a.m. Friday in room 436 of the Capitol Building, Helena, Montana. Chairman Scully presided. All members were present except Representatives Colburn and Kennerly.

SENATE BILL #333:

Representative Day reported from the water sub-committee. The bill was amended and as amended concurred in. The committee voted to accept the sub-committee report, with the vote unanimous.

SENATE BILL #359:

Representative Day reported from the water sub-committee this bill be amended and as amended concurred in. The committee voted to accept the sub-committee recommendation with the vote unanimous. (attached)

SENATE BILL #376:

Representative Day reported from the water sub-committee that this bill was tabled. The committee voted to accept the sub-committee report with the vote unanimous.

SENATE BILL #216:

Representative Day reported from the water sub-committee that the committee had reconsidered their action on this bill, which had been tabled and the resulting vote was "not concurred in". The Judiciary Committee voted to accept the sub-committee action and the vote was unanimous.

SENATE BILL #419:

Representative Courtney reported from the Judiciary sub-committee. He moved the sub-committee report "not concurred in". The motion carried with Representative Teague voting "no".

SENATE BILL #37:

Representative Ramirez moved the proposed amendments be adopted. The motion carried. He then moved "be concurred in as amended". The motion carried with the vote unanimous.

SENATE BILL #413:

Representative Dussault reported from the sub-committee the proposed amendments. Representative Teague moved the committee adopt the proposed amendments except #1 and #11. Representative Dussault explained the amendments and what they would do. Representative Ramirez stated his objections to the two amendments. The motion to accept all except the two amendments carried with the vote unanimous.

Representative Hand moved the rejection of the two amendments after listening to the discussion. Representative Dussault stated that

SENATE BILL NO. 419

INTRODUCED BY TOME, DOVER, ROBERTS, MURRAY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE DEFINITION OF AN INCAPACITATED PERSON IN THE MONTANA UNIFORM PROBATE CODE; AMENDING ~~SECTION~~ SECTIONS 91A-5-101 AND 91A-5-303, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 91A-5-101, R.C.M. 1947, is amended to read as follows:

"91A-5-101. Definitions and use of terms. Unless otherwise apparent from the context, in this code:

(1) "incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment;

(2) "protective proceeding" means a proceeding under the provisions of section 91A-5-401 to determine that a

person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(3) "protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) "ward" means a person for whom ~~whom~~ a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority."

SECTION 2. SECTION 91A-5-303, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"91A-5-303. Procedure for court appointment of a guardian of an incapacitated person. (1) The incapacitated person or any person interested in his welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician

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1 appointed by the court who shall submit his report in
 2 writing to the court and be interviewed by a visitor sent by
 3 the court. The visitor also shall interview the person
 4 seeking appointment as guardian, and visit the present place
 5 of abode of the person alleged to be incapacitated and the
 6 place it is proposed that he will be detained or reside if
 7 the requested appointment is made and submit his report in
 8 writing to the court. The person alleged to be incapacitated
 9 is entitled to be present at the hearing in person, and to
 10 see or hear all evidence bearing upon his condition. He is
 11 entitled to be present by counsel, to present evidence, to
 12 cross-examine witnesses, including the court-appointed
 13 physician and the visitor, and to trial by jury. The issue
 14 may be determined at a closed hearing without a jury if the
 15 person alleged to be incapacitated or his counsel so
 16 requests."

17 SECTION 3. THERE IS A NEW R.C.M. SECTION NUMBERED
 18 91A-5-314 THAT READS AS FOLLOWS:

19 91A-5-314. If a guardian believes his ward should
 20 receive medical treatment for a mental disorder and the ward
 21 refuses, the court may, upon petition by the guardian, grant
 22 an order for evaluation or treatment, provided that no such
 23 order shall forcibly detain the ward against his will for
 24 more than 72 hours. The ward is entitled to an appointment
 25 of counsel and a hearing along with all the other rights

1 guaranteed seriously mentally ill persons under 38-1304.

-End-